



# Social Security Act 1973

## 1973 CHAPTER 38

### PART II

#### OCCUPATIONAL PENSION SCHEMES

##### *Modification and winding-up of schemes*

#### **64 Modification and winding-up by order of Occupational Pensions Board.**

- (1) On an application made to them in respect of an occupational pension scheme by persons competent to make such an application in respect of it the Occupational Pensions Board may make an order—
  - (a) authorising the modification of the scheme with a view to achieving any one or more of the purposes specified in subsection (3) below ;
  - (b) modifying the scheme with a view to achieving any one or more of those purposes; or
  - (c) directing or authorising the scheme to be wound up on grounds specified in subsection (4) below.
- (2) Nothing in this section applies to public service pension schemes.
- (3) The purposes referred to in subsection (1)(a) and (b) above are those of enabling the scheme—
  - (a) to be so treated that an employment to which it applies may be recognised pensionable employment by reference to it;
  - (b) to qualify for the approval of the Inland Revenue for the purposes of Chapter II of Part II of the Finance Act 1970 or to provide benefits enhanced up to the limits suitable in a scheme for which such approval is sought;
  - (c) to provide for the transfer of accrued rights to another scheme with a view to the acquisition, for those whose rights are transferred, of rights under the other scheme in connection with change of employment or otherwise, and for the allowance of transfer credits;

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- (d) to comply with the preservation requirements (without prejudice, however, to anything in section 63(5) to (12) of this Act);
  - (e) to provide for accrued entitlement to benefit (whether in payment or not), so far as payable out of the resources of the scheme, to be surrendered by beneficiaries (at their option and not otherwise, so long as the scheme remains in force and is not being, or to be, wound up) in exchange for other rights assured by means of one or more policies of insurance or annuity contracts, or by other means;
  - (f) to qualify under section 69 of this Act or to have included in, or removed from, it provisions designed to avoid the effect of the rules of law relating to perpetuities,
- or of enabling the trustees or managers of the scheme, or others concerned with, or having rights under, it to enter into alternative arrangements having regard to any provision of this Act, or of any other Act (passed or to be passed) amending or replacing any such provision, or making provision for similar purposes.
- (4) The grounds on which the Board may direct or authorise a scheme to be wound up, on an application made to them in that behalf under subsection (1) above, are that, having regard to any provision of this Act, or to any other Act (passed or to be passed) amending or replacing any such provision or making provision for similar purposes, the scheme ought to be replaced (in whole or in part) by a different scheme, or is no longer required.
- (5) In relation to an occupational pension scheme, the persons competent to make an application to the Board under this section are—
- (a) the trustees or managers of the scheme ;
  - (b) any person other than the trustees or managers who has power to alter any of the rules of the scheme;
  - (c) any person who is an employer of persons in service in an employment to which the scheme applies; and
  - (d) such other persons as regulations may specify, in relation to any category of schemes into which the scheme falls, as being proper persons to make an application for the purposes of this section in respect of a scheme of that category.
- (6) The Board shall not entertain an application for an order by them under this section unless they are satisfied that the purposes of the application (whether the modification or the winding-up of the scheme in question)—
- (a) cannot be achieved otherwise than by means of such an order; or
  - (b) can only be achieved in accordance with a procedure which is liable to be unduly complex or protracted, or involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty;
- but subject to this the Board may on such an application make (with the consent of the applicants) any one or more such orders as are specified in subsection (1) above and may exercise any of the powers of this section from time to time; and the extent of their powers under this section is not limited, in relation to any purposes for which they are exercisable, to the minimum necessary to achieve those purposes.
- (7) The Board shall not make an order under this section (whether related to the modification or to the winding-up of a scheme) unless they are satisfied that it is reasonable in all the circumstances to make it; and they shall not make any such order as would or might in their opinion result in any existing or prospective entitlement of

a member of the scheme, in respect of a period of service before the coming into force of the order or of any modification which the order authorises, being diminished or curtailed without his consent, unless they are satisfied that it is in the interests of the generality of members that the order should be made.

(8) In considering whether or not to make an order, the Board shall have regard to the structure and character of the scheme and the benefits provided by it, to the provisions of this Act and Chapter II of Part II of the Finance Act 1970, and generally to all the circumstances.

(9) An order of the Board under this section—

(a) if it is an order authorising the modification of a scheme, shall be framed so as to confer the power of modification on such persons as the Board think proper (including persons who were not parties to any application made to the Board) and shall include directions indicating the modifications which they consider to be called for;

(b) if it is an order authorising a scheme to be wound up, shall include directions with respect to the manner and timing of the winding-up;

and any reference in this subsection to directions is to such directions as the Board think appropriate having regard to the purposes of the order.

(10) Subsection (9) of section 63 of this Act shall apply with the necessary modifications in relation to an order of the Board under this section as it applies in relation to an order of theirs under subsection (7)(b) or (c) of that section, references in subsection (9) to modification being construed for this purpose as including references to winding-up; and—

(a) an order authorising modification may enable those exercising any power conferred by the order to exercise it retrospectively (whether or not the power could otherwise be so exercised); and

(b) an order modifying a scheme may modify it retrospectively ;

and in this subsection " retrospectively " means with effect from a date before that on which the power is exercised or, as the case may be, the order is made, but only such date as may be proposed for the purposes of this subsection by the persons applying for the order.

(11) In section 22 of the Finance Act 1971 (provisions for amendment of schemes with a view to obtaining Inland Revenue approval), subsections (4) to (10) (powers of Chief Registrar of Friendly Societies to amend schemes) shall cease to have effect.

## **65 Modification, etc., of public service pension schemes.**

(1) Subject to the provisions of this section, the appropriate authority shall, in relation to a public service pension scheme, have power to make such provision for the modification or winding-up of the scheme as could be made by an order of the Occupational Pensions Board under section 64(1)(6) or (c) of this Act in the case of a scheme other than a public service pension scheme ; and in this section " the appropriate authority ", in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Minister for the Civil Service or, in Northern Ireland, the Ministry of Finance as having responsibility for the particular scheme.

(2) The powers of the appropriate authority under this section shall be exercisable by means of an order—

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- (a) directly modifying the scheme (without regard, in the case of a scheme contained in, or made under powers conferred by, an enactment, to the terms of the enactment or any of its restrictions);
- (b) modifying an enactment under which the scheme was made or by virtue of which it has effect; or
- (c) directing that the scheme be wound up and including directions with respect to the manner and timing of the winding-up;

and any such order shall contain such incidental, supplementary and transitional provisions as the appropriate authority considers to be required for the purposes of the order, including provisions adapting, amending or repealing any such enactment as is referred to in paragraph (a) or (b) above.